UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

EASTERN MAINE MEDICAL CENTER,	)	
	)	
Plaintiff	)	
v.	)	Civ. No. 97-142-B
	)	
MAINE STATE NURSES ASSOCIATION,	)	
	)	
Defendant	)	

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

Plaintiff, Eastern Maine Medical Center ("EMMC"), brings this action against Defendant, Maine State Nurses Association ("MSNA"), pursuant to 29 U.S.C. § 185 of the Labor Management Relations Act, 1947, seeking to vacate a portion of a labor arbitration award. Before the Court are the parties' cross-motions for summary judgment. Defendant additionally requests that the Court order Plaintiff to reimburse Defendant for costs and attorneys' fees it incurred in this litigation on the basis that Plaintiff has failed "without justification" to comply with the arbitration award. A hearing on these motions was held on March 6, 1998. For the reasons set forth below, Plaintiff's Motion for Summary Judgment is DENIED and Defendant's Motion for Summary Judgment is GRANTED except as to Defendant's request for attorneys' fees which is DENIED.

BACKGROUND

Plaintiff is a community-based acute care hospital located in Bangor, Maine. Defendant is a labor organization that serves as the duly certified bargaining representative for the Registered Nurses ("RNs") employed by Plaintiff. Among the bargaining RN units represented

by Defendant are Certified Registered Nurse Anesthetists ("CRNAs"), who specialize in administering anesthesia. On April 1, 1994, the parties executed a Collective Bargaining Agreement (the "Agreement") covering the RNs employed by Plaintiff. This Agreement was in effect at the time the grievance in this case arose. Among other provisions, the Agreement outlined a procedure for handling grievances in Articles XXI and XXII which culminated in arbitration. The Agreement also contained a section in Article XXV regarding subcontracting which provided:

> Section 6. Subcontracting. The Medical Center shall have the right to determine the nature and extent of work, if any, to be contracted out and the persons, means and methods to be so utilized, so long as such contracting does not result in the elimination of an existing job classification or result in any Nurse being laid off or changed in job classification or is first negotiated with the Association. The Medical Center will not use this provision to justify using the services of a temporary Nurse staffing agency as a substitute for its normal efforts to maintain its complement of Nurses employed by Eastern Maine Medical Center.

On February 14, 1996, Plaintiff announced that it would no longer be employing CRNAs effective September 30, 1996. Defendant filed a grievance on behalf of the CRNAs, alleging that by terminating all of the bargaining unit CRNAs and subcontracting out work previously done by these bargaining unit CRNAs, Plaintiff was in violation of the subcontracting provision in Article XXV, § 6. The grievance was processed in accordance with the provisions of Article XXI of the Agreement and submitted to arbitration hearings before Arbitrator David Bloodsworth (the "Arbitrator") in accordance with Article XXII of the Agreement.[1] Hearings before the Arbitrator were held on December 9, 1996, and February 25, 1997.

[1] The parties also submitted another issue, involving EMMC's elimination of non-restricted call, to arbitration hearings before Arbitrator Bloodsworth. The Arbitrator decided this second issue in favor of EMMC, and EMMC does not challenge this decision.

In his Award dated June 23, 1997 (the "Award"), the Arbitrator found that Plaintiff violated the subcontracting provision of Article XXV, § 6 by entering into an implied contract with Northeast Anesthesia Associates ("NEA")[2] for CRNA services and terminating the employment of all bargaining unit CRNAs. NEA is a professional association whose anesthesiologists have provided anesthesia services to Plaintiff over the past ten years. Plaintiff has provided NEA staff anesthesiologists with equipment, drugs, materials, a site, and office space.

SUMMARY JUDGMENT

Summary judgment is appropriate in the absence of a genuine issue of any material fact and when the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is genuine for summary judgment purposes, if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A material fact is one that has "the potential to affect the outcome of the suit under applicable law." Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Facts may be drawn from "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits." Fed. R. Civ. P. 56(c).

DISCUSSION

Federal court review of labor arbitration awards is highly deferential. See United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 36 (1987). "Only rarely, and in the most compelling circumstances, will a federal court tinker with an arbitral award made under the aegis

[2] NEA merged in May, 1996, to become Northeast Anesthesia, P.A. ("NAPA"). NAPA, in turn, became part of Spectrum in October, 1996.

of a collective bargaining agreement." El Dorado Technical Servs., Inc. v. Union General De Trabajadores de Puerto Rico, 961 F.2d 317, 318 (1st Cir. 1992). As a general rule, an arbitrator's findings of fact are not open to judicial challenge. Id. at 320. Even if the court is convinced the arbitrator "was seriously mistaken about some of the facts, his award must stand." Id. Moreover, "matters of contract interpretation are typically for the arbitrator, not for a reviewing court." Id. at 319. "A court should uphold an award that depends on an arbitrator's interpretation of a collective bargaining agreement if it can find, within the four corners of the agreement, any plausible basis for that interpretation." Id.

Arbitrators do not, however, have unfettered discretion to interpret collective bargaining agreements or impose a remedy which directly contradicts the language of the agreement. Strathmore Paper Co. v. United Paperworkers Int'l Union, 900 F.2d 423, 426 (1st Cir. 1990). The First Circuit has recognized various formulations of the appropriate deferential standard of review of labor arbitration awards, which are all aimed at ensuring that "the arbitrator's decision relies on his interpretation of the contract as contrasted with his own beliefs of fairness and justice." Advest, Inc. v. McCarthy, 914 F.2d 6, 9 (1st Cir. 1990) (citation omitted) (viewing the various formulations of the standard of review as identical).

Based upon these alternative formulations, Plaintiff asserts the following arguments in favor of vacating the Award: (1) the Arbitrator's finding of an implied contract between EMMC and NEA was improperly derived from the Arbitrator's own notions of equity, fairness, and reasonableness rather than from the "essence" of the Agreement; (2) the Arbitrator's finding of an implied contract represents a "manifest disregard of the law"; (3) the Arbitrator exceeded his authority under the Agreement by interpreting the term "contracted out," in Article XXV, § 6 as

including implied contracts; (4) the Arbitrator mistakenly based his decision on "a crucial assumption that is concededly a non-fact," the existence of consideration provided by EMMC to NEA for the provision of CRNA coverage; and (5) the Arbitrator's decision impermissibly restricts the legal right of EMMC to "partially go out of business." The Court is satisfied that none of these arguments warrant setting aside Arbitrator Bloodsworth's Award.

At the heart of several of Plaintiff's arguments is its contention that the Arbitrator improperly found the existence of an implied contract between Plaintiff and NEA for CRNA services. The Arbitrator made clear in his opinion that he based his finding of this implied contract on "the record as a whole." In particular, the Arbitrator found evidence in the record of consideration for the implied contract. Even if the Court were to disagree with some of the Arbitrator's factual findings, the Court is persuaded that the Award must stand. See El Dorado, 961 F.2d at 320.

The Court is further convinced that the Arbitrator did not exhibit "manifest disregard for the law." In order to demonstrate "manifest disregard," the First Circuit requires a showing that the arbitrator "appreciated the existence of a governing legal rule, but willfully decided not to apply it." Advest, 914 F.2d at 10. The language in the Arbitrator's decision indicates that he understood the governing law and applied it to the evidence in the record. The Court is satisfied that the Arbitrator did not disregard the law or the collective bargaining agreement in favor of his "own notions of equity, fairness, and reasonableness."

The Court is also unpersuaded by Plaintiff's argument that the Arbitrator exceeded his authority. The Court is presented with no evidence which suggests that, contrary to the Arbitrator's interpretation, the subcontracting provision of Article XXV, § 6 excludes implied

contracts. Certainly, the Arbitrator's interpretation of the provision was plausible. Finally, the Court rejects Plaintiff's argument that the Arbitrator's decision impermissibly restricts the legal right of Plaintiff to "partially go out of business." As formulated by Plaintiff, this argument involves "whether in this case the Arbitrator's Decision and Award has changed the bargain made by the [EM]MC and the MSNA by substituting a provision of the Arbitrator's own creation," Pl.'s Mem. Opp'n MSNA's Mot. Summ. J. at 6-7, and is similar to Plaintiff's argument that the Award failed to draw its essence from the Agreement. As discussed above, the Court is satisfied that the Arbitrator legitimately found the existence of an implied contract between Plaintiff and NEA which, in conjunction with Plaintiff's termination of all bargaining unit CRNAs, constituted a violation of Article XXV, § 6. The Court, therefore, denies Plaintiff's Motion for Summary Judgment and grants Defendant's Motion for Summary Judgment as it pertains to upholding the Award.

Defendant also requests that the Court award Defendant attorneys' fees and costs. A court may award attorneys' fees to the prevailing party if it finds that the losing party "acted in bad faith, vexatiously, or for oppressive reasons . . . ." Local 285, Service Employees Int'l Union v. Nonotuck Resource Assoc., Inc., 64 F.3d 735, 737 (1st Cir. 1995) (quoting Alyeska Pipeline Service Co v. Wilderness Soc'y, 421 U.S. 240, 258-59 (1974)); see also, Courier-Citizen Co. v. Boston Electrotypers Union No. 11, 702 F.2d 273, 281 (1st Cir. 1983) (attorneys' fees awardable when party contests enforceable arbitration award "without justification"). While the Court finds Plaintiff's arguments in support of vacating the Award unpersuasive in light of the extremely deferential standard of review accorded labor arbitration awards, the Court is satisfied that Plaintiff did not act in bad faith or without justification. The Court denies Defendant's request

for attorneys' fees and costs.

CONCLUSION

For the reasons set forth above, the Court DENIES Plaintiff's Motion for Summary Judgment. The Court GRANTS Defendant's Motion for Summary Judgment as it relates to upholding Arbitrator Bloodsworth's Award, but DENIES Defendant's request for attorneys' fees and costs.

SO ORDERED.

_____
MORTON A. BRODY
United States District Judge

Dated this 12th day of March, 1998.